HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.980 of 2006

Between:

Sri Satrucharla Vijayarama Raju

… Appellant

And

Nimmaka Jayaraju and six others

… Respondents

::JUDGMENT::

Counsel for the appellant : Shri S.R. Ashok, Senior Advocate assisted by Shri Taddy Nageswara Rao

Counsel for respondent No.1 : Shri B. Tarakam, Senior Advocate assisted by Shri V. Raja Manohar

April 5, 2007

Per G.S. Singhvi, C.J.

This appeal is directed against order dated 02.08.2006 passed in W.P.M.P.No.14038 of 2006 in Writ Petition No.11286 of 2006, whereby the learned Single Judge directed the Chief Minister of Andhra Pradesh (respondent No.2 herein) to decide representation dated 19.12.2005 made by the petitioner (respondent No.1 herein) for dismissing the appellant from the Council of Ministers.

In the writ petition filed by him, respondent No.1 has prayed as under:

> "For reasons stated in the accompanying affidavit, the petitioner prays that the Hon'ble Court may be pleased to issue a writ of mandamus or any other writ or direction, more particularly one in the nature of Writ of Mandamus, directing

the District Collector (respondent No.5)

i) to initiate prosecution against respondent No.7.

ii) direct respondent No.2 to recover Pay and allowances paid to respondent No.7 while he represented as member Lok Sabha; and

iii) direct respondent No.4 to recover pay and allowances paid to respondent No.7 during the periods he represented as Member, Legislative Assembly

and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The above reproduced prayer is founded on the following assertions:

i) that even though respondent No.1 belongs to 'Kshatriya' caste and he was not eligible to contest election from the reserved constituency, on the strength of fake certificate, he successfully contested election from 8 Naguru Assembly Constituency, Vizainagaram District, which was reserved for Scheduled Tribe;

ii) that the election of respondent No.7 was set aside by this Court vide judgment reported as **Nimmakka Jaya Raju v. Satrucharla Vijaya Rama Raju**[1] and the appeal preferred against the judgment was dismissed by the Supreme Court, and

iii) that respondent No. 7 has again been elected from reserved constituency despite the fact that he is not eligible to contest election as a reserved candidate.

The grievance of respondent No.1 is that despite representations made to various functionaries of the State including the Governor of Andhra Pradesh and respondent No.2, no action has been initiated for prosecution of respondent No.7 (the appellant herein) and he is being allowed to continue as Member of the Council of Ministers.

In W.P.M.P.14038 of 2006, the petitioner (respondent No.1 herein) prayed for issue of a direction to the Chief Minister of Andhra Pradesh to dismiss respondent No.7 (the appellant herein) from the Council of Ministers.

The learned Single Judge extensively noted the contentions of the learned counsel for the parties, referred to the judgment of this Court in **Nimmaka Jaya Raju v. Satrucharla Vijaya Rama Raju** (supra) and observed that even though it may be the prerogative of the Chief Minister to choose his cabinet colleagues or the Council of Ministers and to advise His Excellency the Governor of the State in relation to the choice of Ministers, he cannot sit over the representation made by the writ petitioner and, on that premise, passed the order under challenge. For the sake of reference, paragraphs 28, 29 and 30 of the impugned order are reproduced below:

> " 28. It is not as though the first respondent was kept in darkness in view of the judgment of this Court and also the judgment made by the Apex Court. It may be the prerogative of the first respondent – the Chief Minister, to choose his cabinet colleague or the Council of Ministers and to advise His Excellency the Governor of State of Andhra Pradesh in relation to the choice of the ministers. It may be within the wisdom of the first respondent either to accept the request made in the representation or to decline to accept such request made in the representation depending upon the facts and circumstances and also in the light of the factual background and the decisions governing the field. But, however, be that, these judgments may be in relation to the Election Petitions, when these are brought to the notice of the first resonant by making detailed representation dated 19.12.2005, sitting pretty on the representation, in the considered opinion of this Court, is not just and proper. This Court is not inclined to express any further opinion in this context.
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> 29. Hence, in the light of the views expressed by this Court, let the first respondent – the Chief Minister consider the representation of the petitioner dated 19.12.2005 in accordance with law at an early date

> within a reasonable time, keeping in view the grievance of the petitioner complaining the action on the part of the first respondent in this regard. This Court hopes and trusts that an early decision may be taken in this regard by the first respondent in accordance with law.
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> 30. It is also made clear that in the light of the views expressed by the 5 Judge Bench of the Apex Court in **M.P. State Police Establishment's case** (5 supra) and also in view of the fact that it is brought to the notice of this Court that representation in detail was made to His Excellency the Governor of State of Andhra Pradesh, the Governor also in the light of the peculiar facts, may consider the same in the light of the views expressed by the Apex Court, referred to supra."

Shri S.R. Ashok, learned Senior Counsel for the appellant argued that the prayer made in the miscellaneous petition filed by respondent No.1 was clearly beyond the scope of the prayer made in the main petition and the learned Single Judge committed a serious error by entertaining the same. Learned Senior Counsel submitted that if the main petition is to be decided in its present form, it will not be possible for the learned Single Judge to direct the Chief Minister to consider the representation made by the petitioner for dismissal of the appellant from the Council of Ministers and, therefore, there was no warrant for passing an interlocutory order for consideration of the representation for dismissal of the appellant from the Council of Ministers. In support of this argument, learned counsel relied on the judgment of the Supreme Court in **V.K. Majotra v. Union of India** [2]. He further argued that the judgment of the Election Petition cannot be made basis for securing dismissal of the appellant from the Council of Ministers. Another argument of Shri S.R. Ashok is that the certificate issued by Revenue Divisional Officer, Vizainagaram showing that the appellant belongs to 'Konda Dora', which is a Scheduled Tribe is still subsisting and unless the same is cancelled, the appellant cannot be ousted from the cabinet by a judicial fiat by presuming that he

contested the election by misrepresenting his caste.

Shri B. Tarakam, learned Senior Counsel for respondent No.1 supported and defended the order under challenge and argued that the learned Single Judge did not commit any error by directing the Chief Minister to consider and decide representation dated 19.12.2005 made for ouster of the appellant from the Council of Ministers. Shri Tarakam emphasized that if a tainted person like the appellant is allowed to continue in the Council of Ministers, people will loose confidence in the system based on rule of law and democratic set up of the country.

We have thoughtfully considered the respective submissions and are inclined with Shri S.R. Ashok that in the absence of a specific prayer in the main petition for issue of a mandamus to non-petitioner No.1 (respondent No.2 herein) to dismiss non-petitioner No.7 (the appellant herein) from the Council of Ministers, the learned Single Judge ought not to have entertained the prayer made in the miscellaneous petition and issued direction for consideration of the representation made by respondent No.1 herein. We also agree with Shri Ashok that if the writ petition is to be allowed in its present format, the learned Single Judge cannot ordain the Chief Minister to dismiss the appellant from the Council of Ministers on the premise that he had contested election from the reserved constituency by producing a fake certificate because no such prayer has been made in the writ petition.

We are further of the view that in a matter like the present one, the learned Single Judge should not have passed the interim order in terms of the prayer made in the WPMP and that too after expressing opinion on the merits and demerits of the issue raised in the representation of respondent No.1 because observations made by him are bound to prejudice the consideration of representation made by respondent No.1 even before adjudication of the issues raised in the main petition.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. The main petition be listed for final hearing before the learned Single Judge on 06.06.2007.

The respondents in the writ petition are directed to file their counter-affidavits within two weeks. Rejoinder affidavits be filed by the petitioner within next two weeks.

As a sequel to disposal of the main appeal, W.A.M.P.No.2104 of 2006 filed by the appellant and W.V.M.P.No.2347 of 2006 filed by respondent No.1 are disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

April 5, 2007

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[1] 2004(4) ALT 14

[2] (2003) 8 Supreme Court Cases 40